

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 607 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

H C MEHTA

Versus

MANAGING DIRECTOR

Appearance:

MR DM THAKKAR for Petitioners
MR CHIRAG KOTHARI for MR PM RAVAL for Respondent No. 1
MR UMESH TRIVEDI, AGP, for Respondent No. 2
MR MR RAVAL for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/12/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. It is wholly a misconceived and misplaced

petition before this Court under Article 227 of the Constitution. From the document annexure 'B' at page No.18, it is clear that the Municipal Corporation of the City of Ahmedabad has sold this unit to Dairy Development Corporation Ltd. This unit was taken over by the vendee with the employees working therein. Here, para-4(b) of this sale deed is to be referred which provides that the services of the employees so transferred by the vendor and taken over by the Dairy Corporation are deemed by the Dairy Corporation to be continuous and are not deemed by the Dairy Corporation to have been interrupted by such transfer. It further recites that the terms and conditions of services applicable to such employees after such transfer shall not be in any way be less favourable to them than those applicable to them immediately before such transfer (emphasis provided). It is not in dispute that the day on which this unit was sold to Dairy Development Corporation Ltd. by Ahmedabad Municipal Corporation, the Ahmedabad Municipal Corporation had not introduced the pension scheme for its employees. From this condition at the most what maximum could be read in favour of the petitioner is that whatever the terms and conditions of services applicable to the transferred employees immediately before such transfer cannot be altered to their disadvantage. Reliance has been strongly placed by the learned counsel for the petitioners on the document 2:P Settlement which is there at page No.26 annexure 'E' dated 11-5-1981 i.e. before the Ahmedabad Municipal Corporation introduced the pension scheme for its employees. Reference has been made by the learned counsel for the petitioner to paras 5 and 6 of this 2:P Settlement, which read as under:

(v) The House Building Advance benefit is being given to the employees of the Corporation and the same method is being accepted in principle but since the dairy has no sufficient fund, it is under consideration of the management of the dairy that as to how such loan advance can be extended to the employees of the dairy.

(vi) It is also agreed that for future time, the salary and other service benefits being given to the employees working in the dairy is decided at par with the salary and other service benefits as may be applicable and given to the employees of the Ahmedabad Municipal Corporation.

3. From these paras, it is difficult to accept what it is contended by the learned counsel for the petitioner that the management of the unit, Dairy Development

Corporation Ltd., has accepted to give pension to its employees. In fact at that point of time it was not in contemplation with the Corporation to introduce the pension scheme for its own employees. This settlement which has been arrived at that time has to be read in the context of demands raised and if we go by that then it is in respect of salary and other benefits and facilities to be provided to the employees and therein it cannot be read that it includes the pension benefits if in future it is accepted by the Ahmedabad Municipal Corporation for its employees.

4. Another document on which reliance has been placed is also to be referred and that is, annexure 'D' at page No.23. It is Copy of the Minutes of Item No.XXXVII/17(1) passed in the Thirty Seventh Meeting of the Board of Directors of GDDC Ltd. held on 25-3-1981. This Item of which I am just making the reference is taken with the permission of the Chair. The Chairman informed the Board that the following demands were made by the employees of Abad Dairy;

- (i) Increase in cycle allowance to Rs.30/- from Rs.15/- per month w.e.f. 1-4-1980;
- (ii) Interim relief at the rate of Rs.25/- w.e.f. 1-5-1980;
- (iii) Appointment of arbitration/commission for revision of grades/payscale structure etc;
- (iv) Leave travel concession scheme (as approved by the Municipal Corporation on 31-12-1979, i.e., after two days of the transfer of the management of the dairy to GDDC).

5. From this document it further transpires that these demands were on line with the demands accepted by the Ahmedabad Municipal Corporation for its employees. These four demands relates to increase in cycle allowance, interim relief, appointment of arbitration/commission for revision of grades/payscale structure etc; and leave travel concession scheme (as approved by the Municipal Corporation on 31-12-1979 i.e. after two days of the transfer of the management of the dairy to Dairy Development Corporation Ltd.. The document has to be read in the context of the demands which have been made and here also, the demand re. pension has not been made. The petitioners after transfer of the unit and their services to the Dairy Development Corporation Ltd. ceased to be the employees

of the Ahmedabad Municipal Corporation. The vendee is also bound to the condition which provide and put restriction to make any change in service condition of these employees immediately applicable to them on the date prior to transfer to their disadvantage and for future it is open to the management of this transferred unit to lay down the service conditions for the employees which includes the transferred employees and merely on the basis of the fact that the Ahmedabad Municipal Corporation has implemented the pension scheme for its employees, this claim cannot be made. However, it is a matter of settlement no doubt, but the learned counsel for the petitioners has failed to produce any settlement on the record of this special civil application whereunder the management of the transferred unit has agreed to extend the benefit of pension scheme as what it is introduced by the Ahmedabad Municipal Corporation for the transferred employees.

6. There is yet another ground on which this petition deserves to be dismissed. The pension scheme was introduced by the Ahmedabad Municipal Corporation for its employees w.e.f. 10th June, 1983. After this introduction of the pension scheme, the petitioners or the employees' union has not raised either industrial dispute or availed of any other legal remedy available. This petition has been filed in the year 1992 and that too originally by one person, Mr. S.C. Mehta, who is reported to be the General Manager of this unit. He was not a workman and whatever the settlement to which reference has been made he may not be the beneficiary of the same. It is different matter that subsequently many other persons have been impleaded as petitioners but if those petitioners were really aggrieved of non-extension of the pensionary benefits to them, they could have raised the voice and grievance earlier but it has not been done.

7. There is yet another ground on which this petition deserves to be dismissed. It is not in dispute that the petitioners were the members of the scheme framed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, and they have taken the benefit of the scheme on their retirement, as what the learned counsel for the petitioners admits that they all have already retired from the services and they have taken the amount of provident fund lying in their account. In case they really were interested to have this benefit of pension scheme they could have raised this dispute through union and to show their bonafides, could have asked to the management to stop to deduct any

amount from their salary towards contribution of provident fund but that has also not been done. It is not a case where any relief of the nature as prayed for by the petitioners can be granted.

8. In the result, this petition fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

zgs/-